

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT E. THOMAS,

Plaintiff,
v.

ORDER
13-CV-303V(F)

MS. K. WASHBURN,
MS. BELANDA KRUSEN,
JAMES ESGROW,
MR. LT. DONAHUE,
MR. LT. MACKAY,
SOUTHPORT CORR. FACILITY,

Defendants.

The Court (Hon. Richard J. Arcara) referred this case to United States Magistrate Judge Leslie G. Foschio for all pretrial matters, including those that a magistrate judge may hear and determine, see 28 U.S.C. § 636(b)(1)(A), and those that a magistrate judge may hear and thereafter file a report and recommendation, see 28 U.S.C. § 636(b)(1)(B). Docket Item 20. On March 8, 2016, this case was reassigned from Judge Arcara to the undersigned. Docket Item 32.

On February 27, 2015, three defendants – Washburn, Krusen, and MacKay – moved to dismiss the Amended Complaint for failure to state a claim. Docket Item 17. On September 28, 2015, defendant Donahue made the same motion. Docket Item 26. On September 7, 2016, Judge Foschio issued a Report and Recommendation, recommending that the Court grant the defendants' motions and that the "Plaintiff's action against the Southport Correctional Facility should also be dismissed as it is not a

suable entity under §1983." Docket Item 40. The plaintiff did not object to the Report and Recommendation, and the time to file objections now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 require a district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's Report and Recommendation as well as the parties' submissions. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant the motions to dismiss the Amended Complaint against the moving defendants, as well as to dismiss the Amended Complaint against Southport Correctional Facility.

For the reasons stated above and in the Report and Recommendation, the defendants' motions to dismiss (Docket Items 17 and 26) are GRANTED, and the action is dismissed against defendants Washburn, Krusen, Donahue, MacKay, and Southport Correctional Facility. Consistent with the Order of Referral already in place, this matter

is referred back to Magistrate Judge Leslie G. Foschio for further proceedings against the remaining defendant. See Docket Item 20.

IT IS SO ORDERED.

DATE: November 14, 2016
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE